IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2256 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAHANGIRMIYA S SAIYED

Versus

STATE OF GUJARAT

Appearance:

MR DR BHATT for Petitioner

Mr. Ketan M Parikh, ASSTT. GOVERNMENT PLEADER for Respondent Nos. 1, 2, 3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 25/06/2001

ORAL JUDGEMENT

List has been revised. None appears on behalf of the petitioner to prosecute this petition. However, with the assistance of the learned Assistant

Government Pleader, I have gone through the papers on record. I have also heard the learned Assistant Governmetn Pleader.

2. This petition has been filed for a direction to the respondents to fix the pension of the petitioner and pay him all arrears of pension alongwith interest at the rate of 12% per annum from the date on which the petitioner had invalidly retired.

3. The petitioner was appointed as a police constable in Police Department in Surendranagar district with effect from 12th October, 1950. Thereafter he was transferred to the office of the third respondent in Jamnagar district. The petitioner rendered his services with sincerity and honesty. Not a single memo was issued to the petitioner during his entire career. The petitioner was compelled to go on invalid retirement with effect from 23rd December, 1960 due to continuous ill-health of the petitioner. After his invalid retirement, the petitioner got his gratuity. However, he did not receive the amount of pension for which he was entitled to. The petitioner made several applications to consider his case for fixing the pay, amount of pension, but there was no response. He received a reply from the office of the District Superintendent of Police, Jamnagar district, Jamnagar wherein it is stated that the petitioner has not completed 10 years service and hence he was not entitled for the pensionary benefits. Some letter was written by the respondent to the Secretary of Gujarat Minority Board that that the pension of the petitioner has not been fixed erroneously and therefore, the letter dated 16th May, 1983 was written to the Secretary to verify the record and intimate the office. The petitioner requested for furnishing the sheet remarks from the office of the third respondent by a leter dated 3rd January, 1987, but nothing has been done in the matter. The petitioner is an old and infirm person and is subjected to a heavy mental torture by refusal of fixing up of his pension by and on behalf of the respondents on erroneous and arbitrary considerations. He has also given instances that some Ratilal Ravjibhai Thakkar of Patdi village of Dasada Taluka had retired on 9.11.1958 after joining in the year 1949 on 20.4.1949 and despite that he is getting the pension. Hence, th action of the respondents is discriminatory and arbitrary. It is also stated that the State Government has power and authority to relax period prescribed under the rules in case the prescribed minimum period of 10 years' service has not been completed by the employee. Though in the present case, there is no question of relaxation, but on

erroneous interpretation, the legitimate right to get the pension is denied to the petitioner.

3. The respondents have not filed any affidavit-in-reply to the petition. Even according to the papers on record, it appears that the petitioner joined the service on 12.10.1950. Thereafter, he was transferred from one place to another and he was directed to retire with effect from 23rd December, 1960 due to ill-health. But it is not mentioned in the letter that what period of service has been calculated from the date of joining in the department concerned. It does not appear from the letter sent by the respondent no. 3 to the petitioner as to how the authority came to the conclusion that the period of service was less than 10 years. Even then the Government has power to relax the period and can grant grace period making an order of pension. In the facts and circumstances, I think it proper to dispose of this petition with a direction to the Deputy Secretary, Home Department, Government of Gujarat, Gandhinagar to consider the case of the petitioner for grant of pension and other retiral benefits in accordance with rules and regulations. In case, there is a shortfall of a few days or few months, the Deputy Secretary is empowered to give the grace in awarding the pension to the petitioner from the date of retirement of the petitioner. Thus, this petition is being disposed of finally with a direction to the Deputy Secretary, Home Department, Sachivalaya, Gandhinagar to consider the petitioner's claim in accordance with law as it appears that the petitioner joined the service on 12.10.1950 and he was retired from service by an order dated 23rd December, 1960 which is more than 10 years. In case there is any shortfall of few days or few months, the Deputy Secretary will consider the case for grace in granting the pension to the petitioner. Rule is discharged with no order as to costs. The office is directed to send a copy of this judgment alongwith the copy of the petition and annexures to the respondent no.1 within two weeks from today and the Deputy Secretary will pass appropriate orders within three months thereafter.

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